

# **OVERVIEW OF PRIVATE SERVICE IN NC, ANALYZING PERFORMANCE VIA AOC DATA, & FINANCIAL IMPACTS ON N.C. LANDLORDS**

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**PRESENTED FOR THE  
COMMITTEE ON PRIVATE PROCESS SERVERS  
(LRC -2017)**



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# **PRIVATE PROCESS IN N.C.**

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# PRIVATE PROCESS IN N.C.

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- Generally: N.C. Gen. Stat. § 1A-1, Rule 4(a)

- Rule 4(a):

“...The complaint and summons shall be delivered to some proper person for service. In this State, ***such proper person shall be the sheriff of the county where service is to be made or some other person duly authorized by law to serve summons.*** Outside this State, such proper person shall be anyone who is not a party and is not less than 21 years of age or anyone duly authorized to serve summons by the law of the place where service is to be made.”

# PRIVATE PROCESS IN N.C.

- **Serving Private Persons: N.C. Gen. Stat. § 1A-1, Rule 4(j)(1)**
  - **Rule 4(j)(1):** “. . . Upon a natural person by one of the following:
    - ***a. By delivering a copy of the summons and of the complaint to the natural person or by leaving copies thereof*** at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein ***[NOTE: usually Sheriff Only]***.
    - ***b. By delivering a copy of the summons and of the complaint to an agent*** authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute ***[NOTE: usually Sheriff Only]***.
    - ***c. By mailing a copy of the summons and of the complaint, registered or certified mail***, return receipt requested, addressed to the party to be served, and delivering to the addressee ***[NOTE: U.S. Postal Service]***.
    - ***d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2)*** a copy of the summons and complaint, addressed to the party to be served, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt. ***[Note: This method refers to FedEx, UPS, etc.]***
    - ***e. By mailing a copy of the summons and of the complaint by signature confirmation*** as provided by the United States Postal Service, addressed to the party to be served, and delivering to the addressee.” ***[NOTE: U.S. Postal Service]***.

# PRIVATE PROCESS IN N.C.

- **How Does One Prove Service Other Than By Sheriff?**

- **N.C. Gen. Stat. § 1A-1, Rule 4(j2)(2):**

- **“(2) Registered or Certified Mail, Signature Confirmation, or Designated Delivery Service. – Before judgment by default may be had on service by registered or certified mail, signature confirmation, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, *the serving party shall file an affidavit with the court showing proof of such service* in accordance with the requirements of G.S. 1-75.10(a)(4), 1-75.10(a)(5), or 1-75.10(a)(6), as appropriate. *This affidavit together with the return receipt, copy of the proof of delivery provided by the United States Postal Service, or delivery receipt, signed by the person who received the mail or delivery if not the addressee raises a presumption that the person who received the mail or delivery and signed the receipt was an agent of the addressee authorized by appointment or by law to be served or to accept service of process or was a person of suitable age and discretion residing in the addressee's dwelling house or usual place of abode . . . .”***

# PRIVATE PROCESS IN N.C.

- Who Can Serve When A Sheriff Is Unable to Serve?
  - N.C. Gen. Stat. § 1A-1, Rule 4(h1):
  - “If a proper officer returns a summons or other process unexecuted, the plaintiff or his agent or attorney may cause service to be made by anyone who is not less than 21 years of age, who is not a party to the action, and who is not related by blood or marriage to a party to the action or to a person upon whom service is to be made. Except for claims severed by a magistrate pursuant to G.S. 7A-223(b1), this subsection shall not apply to executions pursuant to Article 28 of Chapter 1 or summary ejectment pursuant to Article 3 of Chapter 42 of the General Statutes.”
  - NOTE: This same set of qualifications for private servers (*over 21, not a party, not related, etc.*) was recently amended by S.L. 2017-143 (Senate Bill 88), whereby landlords may hire a private process server to serve a defendant upon a magistrate’s severing of a summary ejectment case into possessory and money-owed components.

# PRIVATE PROCESS IN N.C.

- **Alternate Method for Summary Ejectments: G.S. § 42-29**
- **Established a “in rem” (service by posting) method.**
- **§ 42-29. Service of summons.** The officer receiving the summons shall mail a copy of the summons and complaint to the defendant no later than the end of the next business day or as soon as practicable at the defendant's last known address in a stamped addressed envelope provided by the plaintiff to the action. The officer may, within five days of the issuance of the summons, attempt to telephone the defendant requesting that the defendant either personally visit the officer to accept service, or schedule an appointment for the defendant to receive delivery of service from the officer. If the officer does not attempt to telephone the defendant or the attempt is unsuccessful or does not result in service to the defendant, ***the officer shall make at least one visit to the place of abode of the defendant within five days of the issuance of the summons, but at least two days prior to the day the defendant is required to appear to answer the complaint, excluding legal holidays,*** at a time reasonably calculated to find the defendant at the place of abode to attempt personal delivery of service. He then shall deliver a copy of the summons together with a copy of the complaint to the defendant, or leave copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. ***If such service cannot be made the officer shall affix copies to some conspicuous part of the premises claimed and make due return showing compliance with this section.***

# PRIVATE PROCESS IN N.C.

- G.S. § 42-29's Posting of Service Requirement Is An Exception to the General Rule of N.C. Gen. Stat. § 1A-1, Rule 6(a)

- Rule 6(a) excludes both weekends and holidays in terms of a required action
- However, G.S. § 42-29 created a different standard for summary ejectment, only excluding legal holidays
- This reality is confirmed by N.C. School of Government's Dona Lewandowski:

- *"The law applicable to summary ejectment actions specifically requires that service be accomplished 'at least two days prior to the day the defendant is required to appear to answer the complaint, excluding legal holidays.' The first version of this legislation excluded "weekends and legal holidays" but the reference to "weekends" was deleted from the final legislation. **The result is an exception to the general rule set out in GS 1A-1, Rule 6, with weekend days counted toward satisfaction of the two-day requirement.**" <sup>1</sup>*

- <sup>1</sup> Dona Lewandowski, "Minimum Notice Requirements in Small Claims Actions," *On the Civil Side* (UNC School of Government Website, March 2, 2016)(emphasis added).





# **ANALYSIS OF AOC DATA**

# ANALYSIS OF AOC DATA

## 1. Clerks of Court are required to set court dates within 7 days (*excluding weekends and holidays*) of the filing of a summary ejectment, per N.C. Gen. Stat. § 42-28:

- “When the lessor or his assignee files a complaint pursuant to G.S. 42-26 or 42-27, and asks to be put in possession of the leased premises, *the clerk of superior court shall issue a summons requiring the defendant to appear at a certain time and place not to exceed seven days from the issuance of the summons, excluding weekends and legal holidays*, to answer the complaint. The plaintiff may claim rent in arrears, and damages for the occupation of the premises since the cessation of the estate of the lessee, not to exceed the jurisdictional amount established by G.S. 7A-210(1), but if he omits to make such claim, he shall not be prejudiced thereby in any other action for their recovery.”

# ANALYSIS OF AOC DATA

2. Only legal holidays are excluded from service, per the requirements of § 42-29:
  - “ . . . the officer shall make at least one visit to the place of abode of the defendant **within five days of the issuance of the summons, but at least two days prior to the day the defendant is required to appear to answer the complaint, excluding legal holidays . . .**”
3. Assuming Clerks of Court are honoring N.C. Gen. Stat. § 42-28 and its court-date-within-7-business-days rule, Sheriffs must serve within at least 5 days, but not more than 7 days, of filing for summary ejectments to operate as intended.
4. The data results should place Sheriff performance in the best light possible, **since the analysis did not capture cases for which there was no service reported, thus allowing for complete failures of service to be excluded.**

# **ANALYSIS OF AOC DATA**

- **Procedure Used in Reviewing AOC Court Data:**
  1. **Filter Out all Non-Summary Ejectment cases**
    - CASE\_COURT\_TYPE: CVM only – limited to magistrate court cases
    - ISSUE\_TYPE = SUME – summary ejectment only
  2. **Filter out unserved cases or judgment executions**
    - SERVE\_DT = NOT BLANK – to indicate cases actually served
    - TYPE = REGU OR ALPL – eliminate writs and other types of service
  3. **Filter duplicative entries of same case numbers**
    - Eliminate duplicate case numbers as case numbers entries in data were repeated for each defendant and also for writs, subsequent filings, etc.
  4. **Filter for N.C. Legal Holidays**
    - N.C. State Employee holiday schedule used to exclude dates in the count.
  5. **Establish number of days between filing and service, per G.S. § 42-29, by calculating difference between the two columns of data, counting date of filing as Day 0, the next day as Day 1, etc.:**
    - INIT\_DATE: the date that the case was created in the AOC system.
    - SERVE\_DT is the date that the sheriff reported serving the defendant.
  6. **Create metrics of 0-5 days; 6-7 days, and 8+ days after filing.**
    - Service exceeding 5 days considered a failure of first prong of § 42-29
    - Service at 6-7 days considered potential failure of second prong
    - Service at 8+ days considered likely failure of both prongs

# ANALYSIS OF AOC DATA (2016)

| COUNTY      | Total Cases | 0-5 Days to Serve |       | Overall Failure Rate of First Prong (6 or more days) |       | 6-7 Days to Serve |       | 8+ Days to Serve (Failure Rate of Second Prong) |       |
|-------------|-------------|-------------------|-------|--|-------|-------------------|-------|---|-------|
| BUNCOMBE    | 2,620       | 2,355             | 89.9% | 265  | 10.1% | 227               | 8.7%  | 38  | 1.5%  |
| CUMBERLAND  | 4,737       | 4,673             | 98.6% | 64   | 1.4%  | 38                | 0.8%  | 26  | 0.5%  |
| DURHAM      | 12,225      | 9,703             | 79.4% | 2,522  | 20.6% | 2,007             | 16.4% | 515   | 4.2%  |
| FORSYTH     | 8,497       | 5,039             | 59.3% | 3,458  | 40.7% | 2,207             | 26.0% | 1,251   | 14.7% |
| GASTON      | 4,916       | 4,779             | 97.2% | 137  | 2.8%  | 123               | 2.5%  | 14  | 0.3%  |
| GUILFORD    | 12,528      | 10,336            | 82.5% | 2,192  | 17.5% | 1,579             | 12.6% | 613   | 4.9%  |
| MECKLENBURG | 39,370      | 31,372            | 79.7% | 7,998  | 20.3% | 6,359             | 16.2% | 1,639   | 4.2%  |
| NEW HANOVER | 4,817       | 4,322             | 89.7% | 495  | 10.3% | 445               | 9.2%  | 50  | 1.0%  |
| UNION       | 1,678       | 1,199             | 71.5% | 479  | 28.5% | 265               | 15.8% | 214   | 12.8% |
| WAKE        | 21,145      | 14,793            | 70.0% | 6,352  | 30.0% | 4,474             | 21.2% | 1,878   | 8.9%  |

# ANALYSIS OF CLERK DATA

- A tangent to a review of service data was a review of days-to-court – i.e., the date the Clerk of Court set for trial after filing. Findings for the largest urban counties in 2016:

| COUNTY       | Total Cases | Total Cases to Court* | 0-10 Days to Court |     | 11+ Days to Court |     |
|--------------|-------------|-----------------------|--------------------|-----|-------------------|-----|
| GUILFORD     | 12,440      | 8,105                 | 1,373              | 17% | 6,732             | 83% |
| MECKLENBURG  | 38,922      | 25,715                | 11,210             | 44% | 14,505            | 56% |
| WAKE         | 20,573      | 11,326                | 1,914              | 17% | 9,412             | 83% |
| Grand Totals | 71,935*     | 45,146                | 14,497             | 32% | 30,649            | 68% |

\*There were 26,789 filed cases listed in the data (37%) that didn't go to Court.

- This seems to echo recent AOC analysis of 2016 court disposition dates for summary ejectment cases.

# ANALYSIS OF AOC DATA

- Conclusions:
  - There are measurable failures by local Sheriffs to serve summary ejectment cases within the timeframes required by law.
  - The inability of local Sheriffs to serve summary ejectments is further compounded by some Clerk of Courts' apparent failure to set trial dates within 7 business days, as required by law.
- Effect: Landlords are *caught in the middle* between these two realities, suffering **needless delays** and the **significant costs** associated with them.



# **FINANCIAL IMPACTS UPON** **LANDLORDS - GENERALLY**



# FINANCIAL IMPACTS

- In the face of a defaulting tenant, whether for nonpayment, crime, or other material violations of a lease, the only meaningful remedy a landlord has is **Summary Ejectment**.
- **Realities:**
  - Residential tenants will **rarely pay rent** when in default and facing eviction.
  - Judgments for money are **practically uncollectible** against consumers.
  - Thus, the only real remedy is **to remove the breaching tenant** via the summary ejectment process and **replace them with a new tenant** as fast as possible.

# FINANCIAL IMPACTS

- As re-gaining possession of a rental dwelling and re-renting to another tenant is a landlord's only real remedy, a landlord's losses are measured by the ***loss of daily rent, an ever-ticking clock.***
- Current rental rates range from **\$900 – \$1,200 per month**, based on city and location.
- Thus, each day lost accounts for **\$30.00 - \$40.00 per day**
- **Consider the following scenarios:**
  - **Delay of service and/or court date by 3 days:**  
**\$30 - \$40/day x 3 days = \$90 – \$120 per case**
  - **A court date continued by 7 days due to lack of timely service:**  
**\$30 - \$40/day x 7 days = \$210 – \$280 per case**

# FINANCIAL IMPACTS

- For apartment communities and management companies, economies of scale drive these losses **further**.
- Some communities file as many as 5, or 10, or 15 or more summary ejectment cases per month. Some management companies collectively file over 100 cases per month.
- Imagine a management company filing 100 cases in a month, and the losses suffered in the following events:
- Delay/continuance of 1 week: (7 days x \$30 - \$40/day x 100 cases) = **\$21,000 - \$28,000**.
- The cost of a court date occurring 15 days after filing instead of 10 days (5 additional days x \$30 - \$40/day x 100 cases) = **\$15,000 - \$20,000**.
- **Even small percentages/delays significantly impact NC landlords.**
  - For example, assume just **5%** of all eviction cases in the state (approximately 165,000) experienced either a delay in service or court date, either of which caused a delay of **just 3 days**.
  - The impact on NC landlords: \$30 - \$40/day x 8,250 cases (5% of 165,000) x 3 days = **\$742,500 - \$990,000 per year**.

# FINANCIAL IMPACTS

- Any Lawsuit = A Plaintiff's "Golden Package."
- To every plaintiff, their lawsuit is the **most important one** that day.
- *We respectfully ask that you consider the following:*
  1. The variety of **available service methods**.
  2. The commonplace use of **affidavits of service**.
  3. The **relative simplicity** of posting summons and a complaint on the door of a dwelling owned by the landlord.
  4. Thus, it would seem only reasonable for a Landlord-Plaintiff to have an choice of how their "**Golden Package**" is delivered to the door.
  5. This is especially true considering the **significant financial impacts** caused by any delay in the eviction process.